

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHERYL M. AMY,)	
)	No. CV-11-319-FVS
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
)	MOTION FOR SUMMARY JUDGMENT
v.)	
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	

BEFORE THE COURT are cross-motions for summary judgment. (ECF No. 13, 18). Attorney Lora Lee Stover represents plaintiff; Special Assistant United States Attorney Daniel E. Burrows represents the Commissioner of Social Security (defendant). After reviewing the administrative record and the briefs filed by the parties, the court **grants** defendant's Motion for Summary Judgment.

JURISDICTION

Plaintiff applied for supplemental security income (SSI) and disability insurance benefits (DIB) on August 31, 2009, alleging disability as of June 16, 2003 (Tr. 196). The applications were denied initially and on reconsideration.

Administrative Law Judge (ALJ) Caroline Siderius held a hearing on November 4, 2010 (Tr. 40-70), and issued an unfavorable decision on December 22, 2010 (Tr. 16-27). The Appeals Council denied review on July 25, 2011 (Tr. 1-6). The ALJ's December 2010 decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g).

1 Plaintiff filed this action for judicial review on August 29, 2011
2 (ECF No. 1, 4).

3 **STATEMENT OF FACTS**

4 The facts have been presented in the administrative hearing
5 transcript, the ALJ's decision, and the briefs of the parties.
6 They are only briefly summarized here.

7 Plaintiff was born on December 29, 1960 (Tr. 196) and was 42
8 years old on the alleged onset date. She reported she obtained a
9 two-year AS degree in early childhood education in 1995 (Tr. 55)
10 and last worked in 2003 as a teacher's aide (Tr. 47). Plaintiff
11 indicated she ended that employment because she had trouble
12 staying focused due to insomnia (Tr. 47-48). At the time of the
13 administrative hearing, plaintiff lived by herself in a trailer
14 (Tr. 49-50). Her sole source of income at the time was public
15 assistance (Tr. 58).

16 With respect to physical problems, plaintiff testified that
17 she believes she has fibromyalgia, chronic pain in her back and
18 neck and "kind of all over", and what she believes is nerve issues
19 causing pain down her leg and with her wrist or hand (Tr. 50-51,
20 64). With regard to psychological issues, plaintiff stated she is
21 very forgetful, unorganized and tends to have a lot of anxiety
22 (Tr. 54-55). She indicated she also has depression (Tr. 56).

23 Plaintiff testified she sometimes sleeps until one in the
24 afternoon (Tr. 60) and spends her days watching television,
25 eating, cooking and doing laundry (Tr. 62). She stated she has
26 not received complaints from family members regarding the
27 cleanliness of her home, and she does not look for excuses to keep
28 people from visiting her home (Tr. 62).

1 Plaintiff testified she served 30 days in jail after being
2 convicted for possessing cocaine in 2005 or 2006 (Tr. 48, 57-58).
3 Examining physician Dr. Quackenbush also noted in a December 2006
4 examination that Plaintiff had her driver's license suspended at
5 the time for refusing to submit to a blood test when she was
6 believed to be driving under the influence of alcohol (Tr. 250).
7 Plaintiff also reported to Ms. Jamieson-Turner in an October 2005
8 examination that she had been arrested for a DUI (Tr. 496).
9 However, at the administrative hearing, plaintiff indicated she
10 did not use illegal drugs and did not have problems with alcohol
11 (Tr. 48-49, 59).

12 SEQUENTIAL EVALUATION PROCESS

13 The Social Security Act (the Act) defines disability as the
14 "inability to engage in any substantial gainful activity by reason
15 of any medically determinable physical or mental impairment which
16 can be expected to result in death or which has lasted or can be
17 expected to last for a continuous period of not less than twelve
18 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also
19 provides that a plaintiff shall be determined to be under a
20 disability only if any impairments are of such severity that a
21 plaintiff is not only unable to do previous work but cannot,
22 considering plaintiff's age, education and work experiences,
23 engage in any other substantial gainful work which exists in the
24 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
25 Thus, the definition of disability consists of both medical and
26 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
27 (9th Cir. 2001).

28 ///

1 The Commissioner has established a five-step sequential
2 evaluation process for determining whether a person is disabled.
3 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
4 is engaged in substantial gainful activities. If so, benefits are
5 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If
6 not, the decision maker proceeds to step two, which determines
7 whether plaintiff has a medically severe impairment or combination
8 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
9 416.920(a)(4)(ii).

10 If plaintiff does not have a severe impairment or combination
11 of impairments, the disability claim is denied. If the impairment
12 is severe, the evaluation proceeds to the third step, which
13 compares plaintiff's impairment with a number of listed
14 impairments acknowledged by the Commissioner to be so severe as to
15 preclude substantial gainful activity. 20 C.F.R. §§
16 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P
17 App. 1. If the impairment meets or equals one of the listed
18 impairments, plaintiff is conclusively presumed to be disabled.
19 If the impairment is not one conclusively presumed to be
20 disabling, the evaluation proceeds to the fourth step, which
21 determines whether the impairment prevents plaintiff from
22 performing work which was performed in the past. If a plaintiff
23 is able to perform previous work, that plaintiff is deemed not
24 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At
25 this step, plaintiff's residual functional capacity (RFC) is
26 considered. If plaintiff cannot perform past relevant work, the
27 fifth and final step in the process determines whether plaintiff
28 is able to perform other work in the national economy in view of

1 plaintiff's residual functional capacity, age, education and past
2 work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v);
3 *Bowen v. Yuckert*, 482 U.S. 137 (1987).

4 The initial burden of proof rests upon plaintiff to establish
5 a *prima facie* case of entitlement to disability benefits.

6 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
7 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
8 met once plaintiff establishes that a physical or mental
9 impairment prevents the performance of previous work. The burden
10 then shifts, at step five, to the Commissioner to show that (1)
11 plaintiff can perform other substantial gainful activity and (2) a
12 "significant number of jobs exist in the national economy" which
13 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th
14 Cir. 1984).

15 STANDARD OF REVIEW

16 Congress has provided a limited scope of judicial review of a
17 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
18 the Commissioner's decision, made through an ALJ, when the
19 determination is not based on legal error and is supported by
20 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
21 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
22 1999). "The [Commissioner's] determination that a plaintiff is
23 not disabled will be upheld if the findings of fact are supported
24 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
25 (9th Cir. 1983) (*citing* 42 U.S.C. § 405(g)). Substantial evidence
26 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
27 1112, 1119 n. 10 (9th Cir. 1975), but less than a preponderance.
28 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989).

1 Substantial evidence "means such evidence as a reasonable mind
2 might accept as adequate to support a conclusion." *Richardson v.*
3 *Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch
4 inferences and conclusions as the [Commissioner] may reasonably
5 draw from the evidence" will also be upheld. *Mark v. Celebrezze*,
6 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers
7 the record as a whole, not just the evidence supporting the
8 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20,
9 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525, 526
10 (9th Cir. 1980)).

11 It is the role of the trier of fact, not this Court, to
12 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
13 evidence supports more than one rational interpretation, the Court
14 may not substitute its judgment for that of the Commissioner.
15 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
16 (9th Cir. 1984). Nevertheless, a decision supported by
17 substantial evidence will still be set aside if the proper legal
18 standards were not applied in weighing the evidence and making the
19 decision. *Browner v. Secretary of Health and Human Services*, 839
20 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
21 evidence to support the administrative findings, or if there is
22 conflicting evidence that will support a finding of either
23 disability or nondisability, the finding of the Commissioner is
24 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
25 1987).

26 ALJ'S FINDINGS

27 At step one, the ALJ found plaintiff has not engaged in
28 substantial gainful activity since June 16, 2003, the alleged

1 onset date (Tr. 18). At step two, she found plaintiff had severe
2 impairments of "degenerative disc disease; osteopenia of the left
3 hip; depression; anxiety disorder, NOS; undifferentiated
4 somatoform disorder" (Tr. 18). At step three, the ALJ found
5 plaintiff's impairments, alone and in combination, did not meet or
6 medically equal one of the listed impairments in 20 C.F.R.,
7 Appendix 1, Subpart P, Regulations No. 4 (Tr. 19). The ALJ
8 assessed plaintiff's RFC and determined that plaintiff could lift
9 20 pounds occasionally and 10 pounds frequently; could stand
10 and/or walk for a total of about 6 hours in an 8-hour workday;
11 could sit for a total of about 6 hours in an 8-hour workday; would
12 need to be able to change positions at least once per hour; should
13 never climb ladders, ropes or scaffolds; and is capable of
14 performing 1 to 3 step tasks with occasional public contact and
15 occasional contact with coworkers (Tr. 21).

16 At step four, the ALJ found that plaintiff could perform her
17 past relevant work as a teacher's aide I (Tr. 25-26). In the
18 alternative, the ALJ concluded at step five that, considering
19 plaintiff's age, education, work experience and RFC, and based on
20 vocational expert testimony, there are jobs that exist in
21 significant numbers in the national economy that plaintiff can
22 perform (Tr. 26-27). The ALJ thus determined that plaintiff has
23 not been under a disability within the meaning of the Social
24 Security Act at any time from June 16, 2003, through the date of
25 her decision (Tr. 27).

26 ISSUES

27 Plaintiff alleges the ALJ erred because the substantial
28 weight of the record evidence supports a more limited mental RFC

1 determination. (ECF No. 14 at 12-13). Plaintiff specifically
2 argues that the ALJ failed to properly evaluate the medical
3 opinions of her providers and consultative examiners. *Id.*
4 Plaintiff also contends the ALJ erred by finding that she lacks
5 credibility. (ECF No. 14 at 13-15).

6 DISCUSSION

7 I. Plaintiff's Credibility

8 Plaintiff argues that the ALJ erred by failing to properly
9 consider plaintiff's testimony regarding her limitations. (ECF
10 No. 14 at 14-15). Plaintiff asserts the ALJ should have found,
11 based on plaintiff's testimony, that she has limitations in her
12 abilities to work with supervisors, handle stress, maintain
13 appropriate behavior and be present on a regular basis. *Id.*
14 Defendant contends that the ALJ's conclusion that plaintiff was
15 not entirely credible had substantial support in the record and
16 should be upheld. (ECF No. 19 at 14-16).

17 It is the province of the ALJ to make credibility
18 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
19 1995). However, the ALJ's findings must be supported by specific
20 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir.
21 1990). Once the claimant produces medical evidence of an
22 underlying medical impairment, the ALJ may not discredit testimony
23 as to the severity of an impairment because it is unsupported by
24 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
25 1998). Absent affirmative evidence of malingering, the ALJ's
26 reasons for rejecting the claimant's testimony must be "clear and
27 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).
28 "General findings are insufficient: rather the ALJ must identify

1 what testimony is not credible and what evidence undermines the
2 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
3 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

4 The ALJ determined that plaintiff's medically determinable
5 impairments could reasonably be expected to cause some of the
6 alleged symptoms, but that plaintiff's statements concerning the
7 intensity, persistence and limiting effects of these symptoms were
8 not credible to the extent they were inconsistent with the ALJ's
9 RFC assessment (Tr. 22). As noted above, the ALJ found plaintiff
10 retained the RFC to perform a limited range of light exertion
11 level work with the non-exertional limitations of performing 1 to
12 3 step tasks with only occasional public contact and only
13 occasional contact with coworkers (Tr. 21).

14 The undersigned agrees with the ALJ that the medical evidence
15 of record does not reflect the level of limitation plaintiff has
16 alleged in this case (Tr. 22). The ALJ points out that physical
17 examinations have been normal overall, and plaintiff's treating
18 nurse practitioner noted there were no real objective findings to
19 support plaintiff's physical complaints (Tr. 22, 255, 304). The
20 ALJ further indicates that plaintiff's mental status exams have
21 been normal overall (Tr. 22). Examinations have shown plaintiff
22 to be pleasant, cooperative, well groomed, with fair eye contact,
23 no indication of a thought disorder, and fair insight and judgment
24 (Tr. 22, 250, 484, 535). Testing performed in December 2006
25 revealed average to superior auditory and visual memory abilities
26 (Tr. 22, 251). One medical professional noted in October 2005
27 that although plaintiff's MMPI results were suggestive of some
28 difficulties, she presented as an attractively dressed and well

1 groomed woman who seemed to have a busy social life (Tr. 22, 498).
2 Plaintiff also reported at that time that she had no problems with
3 her relationships with co-workers and supervisors (Tr. 495).

4 Plaintiff's testimony at the administrative hearing also
5 contradicts the level of limitation plaintiff alleges. Despite
6 claims throughout the record that she has problems with sleep,
7 plaintiff did not testify that she has difficulty with sleep,
8 instead indicating that she sometimes sleeps until one in the
9 afternoon (Tr. 60). She also testified she spends her days
10 watching television, eating, cooking and doing laundry, and, with
11 respect to her social life, she has not received complaints from
12 family members regarding the cleanliness of her home and she does
13 not look for excuses to keep people from visiting her home (Tr.
14 62).

15 It also appears that plaintiff has been noncompliant with
16 mental health treatment. Noncompliance with medical care or
17 unexplained or inadequately explained reasons for failing to seek
18 medical treatment cast doubt on a claimant's subjective
19 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885
20 F.2d 597, 603 (9th Cir. 1989). As noted by the ALJ, treatment
21 notes from 2007 reflect a lack of follow-up on mental health
22 treatment suggestion and last minute cancellations for behavioral
23 health appointments (Tr. 23, 257). Notes from 2010 reflect other
24 cancellations and missed appointments (Tr. 569), and a counseling
25 discharge summary from August 2010 indicates that plaintiff had
26 not been seen since April 2010 and did not respond to messages
27 regarding rescheduling appointments (Tr. 23, 466).

28 ///

1 Plaintiff's daily activities are also inconsistent with her
2 allegations of disabling limitations. *Fair v. Bowen*, 885 F.2d
3 597, 603 (9th Cir. 1989) (it is well-established that the nature
4 of daily activities may be considered when evaluating
5 credibility). As indicated by the ALJ, plaintiff has described
6 daily activities that are relatively intact, varied and sustained.
7 She reports she cares for her granddaughter quite a bit; helps her
8 granddaughter eat, dress, and play; has no problems with personal
9 care; prepares simple meals; does laundry; performs light
10 cleaning; washes dishes; drives; does grocery shopping weekly;
11 plays Solitaire and Backgammon; and plays cards or dice games with
12 others on weekends (Tr. 23). In October 2005, plaintiff also
13 indicated that she and a friend were planning to open an espresso
14 stand (Tr. 23, 496). This level of activity is inconsistent with
15 plaintiff's claim of disabling conditions.

16 After reviewing the record, the undersigned finds that the
17 reasons provided by the ALJ for discounting plaintiff's subjective
18 complaints are clear, convincing, and fully supported by the
19 record. Accordingly, the ALJ did not err by concluding that
20 plaintiff's subjective complaints regarding the extent of her
21 functional limitations were not fully credible in this case.

22 **II. Mental Limitations**

23 Plaintiff argues that her mental condition poses greater
24 limitations than as assessed by the ALJ in this case. (ECF No. 14
25 at 12-13). Plaintiff specifically complains that the ALJ failed
26 to provide convincing rationale for rejecting the opinions of Drs.
27 Dalley, Quackenbush, Mulvihill and Rinaldi. *Id.* Defendant
28 responds that the ALJ gave specific and legitimate reasons for

1 discounting the Quackenbush and Wilcox-Sjostrom-Dalley opinions,
2 and these reasons were supported by substantial evidence in the
3 record. (ECF No. 19 at 9-14).

4 In a disability proceeding, the courts distinguish among the
5 opinions of three types of physicians: treating physicians,
6 physicians who examine but do not treat the claimant (examining
7 physicians) and those who neither examine nor treat the claimant
8 (nonexamining physicians). *Lester v. Chater*, 81 F.3d 821, 839
9 (9th Cir. 1996). The Ninth Circuit has held that "[t]he opinion
10 of a nonexamining physician cannot by itself constitute
11 substantial evidence that justifies the rejection of the opinion
12 of either an examining physician or a treating physician." *Id.* at
13 830. Rather, an ALJ's decision to reject the opinion of a
14 treating or examining physician, may be *based in part* on the
15 testimony of a nonexamining medical advisor. *Andrews v. Shalala*,
16 53 F.3d 1035, 1043 (9th Cir. 1995). The ALJ must also have other
17 evidence to support the decision such as laboratory test results,
18 contrary reports from examining physicians, and testimony from the
19 claimant that was inconsistent with the physician's opinion. *Id.*
20 at 1042-1043. Moreover, an ALJ may reject the testimony of an
21 examining, but nontreating physician, in favor of a nonexamining,
22 nontreating physician only when he gives specific, legitimate
23 reasons for doing so, and those reasons are supported by
24 substantial record evidence. *Roberts v. Shalala*, 66 F.3d 179, 184
25 (9th Cir. 1995).

26 Peter Rinaldi, M.D., treated plaintiff from November 19,
27 2002, to June 27, 2003 (Tr. 542-546). Medical records indicate
28 Dr. Rinaldi diagnosed plaintiff with depression, anxiety, sleep

1 deprivation/insomnia and back pain and prescribed medication for
2 depression and anxiety during this time period. *Id.* It was noted
3 on November 19, 2002, that Dr. Rinaldi mentioned counseling, but
4 that plaintiff was unwilling to see a counselor at that time (Tr.
5 546). On June 27, 2003, Dr. Rinaldi noted that plaintiff was
6 doing well and planned to open an espresso stand (Tr. 543). The
7 physical exam on that date revealed "a pleasant healthy-appearing
8 woman in no distress" (Tr. 543).

9 Dr. Rinaldi's records are mostly from a period of time prior
10 to the alleged onset date. Those that are from the relevant time
11 period do not support greater limitations than those assessed by
12 the ALJ. In any event, as noted by defendant, the reports only
13 document plaintiff's reported symptoms and indicate the doctor's
14 diagnoses. The records do not discuss plaintiff's functional
15 limitations or the expected duration of any limitations.

16 On October 24, 2005, plaintiff was examined by Kathy
17 Jamieson-Turner, M.S., under the supervision of Frank Rosekrans,
18 Ph.D. (Tr. 491-498). Plaintiff reported spending her days
19 cleaning, cooking, eating, playing cards with friends, listening
20 to music and watching television (Tr. 496). Plaintiff also stated
21 she had no difficulty performing daily household chores (Tr. 496).
22 Ms. Jamieson-Turner diagnosed personality disorder, NOS, with
23 borderline and dependent features (Tr. 492). She gave plaintiff a
24 global assessment of functioning (GAF) score of 70¹ (Tr. 497) and
25

26 ¹A GAF of 70-61 is characterized as: "Some mild symptoms or
27 some difficulty in social, occupational, or school functioning,
28 but generally functioning pretty well." DIAGNOSTIC AND STATISTICAL
MANUAL OF MENTAL DISORDERS 12 (3d ed. Rev. 1987).

1 opined that plaintiff had no cognitive or social impairments (Tr.
2 493). She indicated that while the results of plaintiff's MMPI
3 were suggestive of her having some difficulties, her presentation
4 was not consistent with having any difficulties (Tr. 498). Ms.
5 Jamieson-Turner stated plaintiff "is an attractive neatly dressed
6 and well groomed woman who seems to have a busy social life.
7 There was no evidence to suggest symptoms of depression severe
8 enough to prevent [plaintiff] from working" (Tr. 498).

9 The ALJ noted that Ms. Jamieson-Turner's opinion was only
10 partially supported by her clinical findings and thus was not
11 given "great weight" (Tr. 24). Nevertheless, the ALJ
12 appropriately gave Ms. Jamieson-Turner's opinion some weight in
13 this matter (Tr. 24), as it is generally consistent with the
14 weight of the credible evidence of record.

15 On June 25, 2006, plaintiff was evaluated by Joyce Everhart,
16 Ph.D. (Tr. 271-275). Plaintiff reported she gets up in the
17 morning and then usually watches television until after 3:00 p.m.
18 Plaintiff reported she could spend hours playing on her computer
19 during the day (Tr. 273). Dr. Everhart diagnosed depressive
20 disorder, NOS, mild and gave plaintiff a GAF score of 55/60² (Tr.
21 274). Dr. Everhart indicated plaintiff does not need help to
22 complete her activities of daily living, she is able to cook,
23 clean, do laundry and take care of her personal hygiene, and she
24 presented with good social skills and seemed only mildly depressed
25 (Tr. 274). It was noted that Plaintiff's train of thought was

26
27 ²A GAF of 60-51 reflects: Moderate symptoms or moderate
28 difficulty in social, occupational, or school functioning.
DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 32 (4th ed. 1994).

1 logical and coherent, her attention, concentration and
2 intellectual ability appeared to be within normal limits, she had
3 good ability to complete one or two-step tasks of a repetitive
4 nature, she appeared to have some ability to complete complex
5 multi-step tasks, and her persistence and pace were good (Tr. 274-
6 275).

7 The ALJ found that Dr. Everhart's opinion was well supported
8 by clinical findings and was consistent with the medical record as
9 a whole (Tr. 24). The undersigned finds that the ALJ properly
10 gave Dr. Everhart's opinion significant weight (Tr. 24) as it is
11 consistent with the credible evidence of record.

12 On December 5, 2006, plaintiff underwent a psychological
13 evaluation performed by Robert L. Quackenbush, Ph.D. (Tr. 248-
14 252). Plaintiff reported she is able to complete most households
15 chores. She cooks, washes dishes, vacuums, performs laundry
16 tasks, and completes some outdoor work (Tr. 250). Plaintiff was
17 fully cooperative throughout the exam and no marked problems were
18 observed with plaintiff's concentration, persistence or pace (Tr.
19 250). Testing revealed a profile of average to superior auditory
20 and visual memory abilities (Tr. 251). Dr. Quackenbush diagnosed
21 depressive disorder, NOS, gave plaintiff a GAF score of 55, and
22 opined that plaintiff's prognosis was fair to good (Tr. 251-252).
23 He noted that depression created problems and that consistent
24 mental health therapy, in combination with pharmacotherapy, was
25 indicated (Tr. 252).

26 As noted by the ALJ, Dr. Quackenbush's conclusion regarding
27 plaintiff's cognitive limitations was only partially supported by
28 his clinical findings and his opinion regarding plaintiff's social

1 and adaptive limitations appeared to have been based largely on
2 plaintiff's self-report³ (Tr. 25). The ALJ gave Dr. Quackenbush's
3 opinion regarding plaintiff's social and adaptive limitations
4 little weight as it was inconsistent with plaintiff's relatively
5 intact daily activities. Dr. Quackenbush's opinion in this regard
6 is also inconsistent with the weight of the record evidence which
7 reflects adequate social functioning. The undersigned agrees with
8 the ALJ's finding as to Dr. Quackenbush.

9 On June 7, 2007, plaintiff was examined by Dawn Wilcox, B.A.,
10 M.S. Candidate, Brooke Sjostrom, M.S., LMHC, and Mahlon Dalley,
11 Ph.D. (Tr. 262-270). Plaintiff reported difficulty doing daily
12 household chores due to feeling overwhelmed (Tr. 264). The
13 medical professionals diagnosed undifferentiated somatoform
14 disorder and major depressive disorder, recurrent moderate, and
15 gave plaintiff a GAF score of 56 (Tr. 265). They opined that
16 plaintiff's somatic and depressive symptoms were likely to
17 interfere with her ability to tolerate the pressures and
18 expectations of a normal employment position (Tr. 265). It was
19 noted that plaintiff had marked and moderate limitations with
20 social functioning (Tr. 269), but the medical professionals
21 estimated plaintiff would be impaired to the degree indicated for
22 a maximum of only 6 months⁴ (Tr. 270).

23 ///

25 ³As indicated above, the ALJ appropriately discounted
26 plaintiff's subjective complaints in this case. See *supra*.

27 ⁴The June 7, 2007 Wilcox-Sjostrom-Dalley opinion would thus
28 not meet the duration requirements of the Act (one year). 42
U.S.C. § 1382c(a)(3)(A).

1 On December 17, 2007, Ms. Sjostrom and Dr. Dalley completed
2 another psychological/psychiatric evaluation (Tr. 308-319).
3 Plaintiff again reported difficulty completing daily household
4 chores (Tr. 318). Plaintiff was diagnosed with undifferentiated
5 somatoform disorder and major depressive disorder, recurrent,
6 severe without psychotic features, and was given a GAF score of 51
7 (Tr. 318). It was opined that plaintiff had marked and moderate
8 social limitations (Tr. 310), but that the impairments were
9 expected to last only 6 to 12 months (Tr. 311). They indicated
10 plaintiff's current mood and somatic symptoms were likely to
11 continue to interfere with her ability to successfully initiate
12 and maintain regular employment (Tr. 319).

13 On May 23, 2008, Ms. Sjostrom and Dr. Dalley completed a
14 third psychological/psychiatric evaluation (Tr. 320-328). They
15 diagnosed plaintiff with undifferentiated somatoform disorder and
16 major depressive disorder, recurrent, moderate, and gave plaintiff
17 a GAF score of 53 (Tr. 327). On this occasion, they indicated
18 that plaintiff's depression and somatic concerns were not likely
19 to improve substantially within the next 12 months (Tr. 323, 327).

20 On August 24, 2010, Dr. Dalley completed a fourth evaluation
21 of Plaintiff (Tr. 527-536). Plaintiff was diagnosed with major
22 depressive disorder, recurrent, moderate, and generalized anxiety
23 disorder and given a GAF score of 56 (Tr. 530). Dr. Dalley
24 assessed marked social limitations (Tr. 531) and indicated it was
25 unlikely that her condition would improve within the next 12
26 months (Tr. 536).

27 The ALJ agreed with the findings of the above medical
28 professionals with respect to plaintiff's cognitive functioning;

1 however, the conclusions regarding plaintiff's social limitations
2 were accorded little weight as they appeared to have been based
3 largely on plaintiff's self-report⁵ and were inconsistent with
4 plaintiff's relatively intact daily activities (Tr. 25). As noted
5 by the ALJ, plaintiff's daily activities, which include shopping
6 and playing cards with others, suggest adequate social function
7 (Tr. 20). The undersigned finds that the ALJ's decision to accord
8 the medical professionals' assessed limitations regarding social
9 factors little weight is fully supported by the record evidence
10 which demonstrates that plaintiff's social functioning is not
11 significantly limited.

12 On July 11, 2007, James Bailey, Ph.D., reviewed the record
13 and concluded that plaintiff had the ability to understand,
14 remember and carry out simple and complex instructions and tasks,
15 could work around others but not with high levels of cooperation,
16 would need mostly positive feedback and could respond to goals set
17 by others (Tr. 279). Eugene Kester, M.D., affirmed Dr. Bailey's
18 report on September 26, 2007. On November 30, 2009, Mary A.
19 Gentile, Ph.D., reviewed the record and concluded plaintiff was
20 capable of simple and well-learned complex tasks, her attention,
21 concentration and pace would wane episodically, and she had no
22 significant social or adaptive limitations (Tr. 420-422). Beth
23 Fitterer, Ph.D., affirmed Dr. Gentile's report on February 26,
24 2010 (Tr. 439).

25 ///

27 ⁵Again, as indicated above, the ALJ appropriately discounted
28 plaintiff's subjective complaints in this case. See *supra*.

1 The ALJ found the opinions of the state agency reviewing
2 physicians adequately considered plaintiff's subjective complaints
3 and were consistent with the objective medical evidence of record
4 and the record as a whole (Tr. 23). The undersigned determines
5 that the state agency assessments were properly accorded
6 significant weight by the ALJ in this matter.

7 On January 7, 2010, plaintiff underwent a psychiatric
8 evaluation performed by Susi Mulvihill, M.D. (Tr. 486-488).
9 Plaintiff reported extreme difficulty with sleep and anxiety (Tr.
10 486). Dr. Mulvihill indicated plaintiff's thought processes were
11 essentially logical and goal directed and her insight and judgment
12 were fair (Tr. 487). Dr. Mulvihill diagnosed major depressive
13 disorder and anxiety disorder, NOS, and gave plaintiff a GAF score
14 of 45⁶ (Tr. 487-488).

15 As correctly asserted by defendant, Dr. Mulvihill's report
16 contains only recordings of Plaintiff's reported symptoms and the
17 doctor's diagnosis of plaintiff's condition. It did not contain
18 opinions on the expected duration or functional effects of
19 plaintiff's mental impairments. (ECF No. 19 at 12 n. 4). Dr.
20 Mulvihill's report is of little value.

21 Based on the foregoing, the record does not support a more
22 restrictive finding than Plaintiff being restricted to work at the
23 light exertion level with the non-exertional limitations of
24 performing 1 to 3 step tasks with only occasional public contact

25
26 ⁶A GAF of 50-41 reflects: "[s]erious symptoms (e.g.,
27 suicidal ideation, severe obsessive rituals, frequent
28 shoplifting) or any serious impairment in social, occupational,
or school functioning (e.g., no friends, unable to keep a job)."
DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS-IV 32 (4th ed. 1994).

1 and only occasional contact with coworkers (Tr. 21). Therefore,
2 the undersigned finds that the ALJ's mental RFC determination is
3 in accord with the weight of the record evidence and free of
4 error.

5 **CONCLUSION**

6 Having reviewed the record and the ALJ's conclusions, this
7 court finds that the ALJ's decision is free of legal error and
8 supported by substantial evidence. Accordingly,

9 **IT IS HEREBY ORDERED:**

10 1. Defendant's Motion for Summary Judgment (**ECF No. 18**) is
11 **GRANTED.**

12 2. Plaintiff's Motion for Summary Judgment (**ECF No. 13**) is
13 **DENIED.**

14 **IT IS SO ORDERED.** The District Court Executive is directed
15 to file this Order, provide copies to the parties, enter judgment
16 in favor of Defendant, and **CLOSE** this file.

17 **DATED** this 7th day of January, 2013

18 S/Fred Van Sickle
19 Fred Van Sickle
20 Senior United States District Judge
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